REMARKS

Prior to an examination on the merits, entry of the foregoing amendments is respectfully requested.

The present application is a continuation of application Serial No. 10/178,415, filed June 24, 2002, which remains pending, and which is a continuation of application Serial No. 09/691,758, filed October 18, 2000, now U.S. Patent No. 6,425,823, which is a continuation of application Serial No. 08/950,858, filed October 15, 1997, now U.S. Patent No. 6,336,862, which is a continuation of application Serial No. 08/617,807, filed March 6, 1996, which represents the U.S. National Phase application of P.C.T. Application No. PCT/AU94/00503, filed Monday, August 29, 1994, now U.S. Patent No. 5,830,063, which claims priority from Applicant's corresponding Australian patent application, filed August 27, 1993. The effective filing date for the instant continuation application is therefore submitted to be August 27, 1993.

By the present preliminary amendments, Applicant has cancelled original Claims 1-15 and has added new Claims 16-39, of which Claims 16 and 26 are presented in independ nt form.

Pending Claims 16-39 of the present continuation application are copied (substantially identically) from Tracy et al., Patent Application Serial No. 10/165,227, filed June 7,

2002 (Publication No. 2001/0151342 A1, published October 17, 2002), and are numbered as Claims 1-5, 9-13, 15-20, 24-28 and 30-32, respectively, of Patent Application Publication No. 2002/0151342 A1.

Tracy et al., Patent Application Publication No. 2002/-0151342 A1, was issued on October 17, 2002, and therefore this continuation application, which copies claims from U.S. Patent Application Serial No. 10/165,227 presents claims copied from said patent application within one year since the publication of said application and, therefore, is in compliance with 35 U.S.C. §135(b)(2). *See*, *Ex parte McGrew*, 41 USPQ2d 2004 (PTO Bd. Pat. App. & Inter. 1995), *aff'd*, *In re McGrew*, 120 F.3d 1236, 43 USPQ2d 1632 (Fed. Cir. 1997).

Copied Claims 16-39 have been presented in the instant continuation application for the purpose of provoking an interference between the claims pending in this application and the claims pending in Tracy et al., Application Serial No. 10/165,227, filed June 7, 2002.

It is respectfully contended that Applicant's disclosure adequately supports the subject matter of Claims 1-5, 9-13, 15-20, 24-28 and 30-32 of Patent Application Publication No. 2002/0151342 A1, as herein presented, as required by 35 U.S.C. §112, first paragraph, when such claims are given their broadest reasonable interpretation. *See*, *DeGeorge v. Bernier*, 768 F.2d 1318, 226 USPQ 758, 761-762 (Fed. Cir.

1985) ("the broadest interpretation is always applicable so long as it is reasonable").

By way of example only, independent Claim 16 of the instant continuation application, which is copied from, and identical to, Claim 1 of Tracy et al., Patent Application Publication No. 2002/0151342 A1, reads:

16. (new) A method of playing a group participation wagering game comprising the steps of:

forming a group consisting of all entrants who have made a first wager on the outcome of a first game and a second wager on the outcome of a second, group participation game;

determining whether the first game is a winner;

indicating the outcome of the game; and,

determining whether the second game is a winner.

As a legal matter, "[w]hen interpretation is required of a claim that is copied for interference purposes, the copied claim is viewed in the context of the patent from which is was copied." *See*, *In re Spina*, 975 F.2d 854, 24 USPQ2d 1142, 1144 (Fed. Cir. 1992); *DeGeorge v. Bernier*, 768 F.2d 1318, 1322, 226 USPQ 758, 761-762 (Fed. Cir. 1985) (if claim language is ambiguous "resort must be had to the specification of the patent from which the copied claim came"). Thus, how certain terminology is to be understood in the claims which Applicant has copied from Tracy et al., U.S. patent application No. 10/165,227, filed June 7, 2002, and published

on October 17, 2002, under Publication No. US 2002/0151342 A1, depends upon how such terminology has been defined in Patent Application Publication No. US 2002/0151342 A1.

The first sub-paragraph, or method step, of Claim 16 (copied from Claim 1 of Tracy et al., Patent Application Publication No. US 2002/0151342 A1, published October 17, 2002) reads:

> "forming a group consisting of all entrants who have made a first wager on the outcome of a first game and a second wager on the outcome of a second, group participation game."

In the instant Applicant's ("Byrne") originally-filed Specification, the "group" is "all entrants" who participate in Byrne's Standard Keno Game and Collateral ("Super") Keno Game; Byrne's Collateral Keno Game being the equivalent of Tracy et al.'s "second, group participation game."

The next three (and last) steps of method Claim 16 of this continuation application are:

"determining whether the first game is a winner;

"indicating the outcome of the game; and,

"determining whether the second game is a winner."

The steps are not in the same order as those of Claim 1 of Tracy et al., however, the transitional clause of Claim 1 of Tracy et al. reads simply "comprising the steps of" and therefore imposes no limitation on the order in which the steps of the method in Tracy et al. must b performed.

In "determining whether the first game is a winner" is readily met by Byrne's originally-filed Specification and exists when there is a winner of Byrne's Standard Keno Game. The determination of a winner in the "first game," or Standard Keno Game, necessarily, or inherently, requires "indicating the outcome of the game," the third step of Claim 1 of Tracy et al.

Finally, "determining whether the second game is a winner," the last method step of pending Claim 16 (and the second method step of Claim 1 of Tracy et al.) is readily met by Byrne's originally-filed Specification when it is determined whether any participate in Byrne's Collateral, or Super, Keno Game has won.

The instant Applicant, therefore, respectfully submits that his Specification, as originally-filed, supports all of the method steps recited in method Claim 1 of Tracy et al., Patent Application Serial No. 10/165,227, filed June 7, 2002 (Publication No. 2001/0151342 A1, published October 17, 2002.)

The foregoing application of Applicant's disclosure against the method steps of Claim 1 of Tracy et al., Patent Application Serial No. 10/165,227, filed June 7, 2002 (Publication No. 2001/0151342 A1) is intended to be merely illustrative of one of several ways in which Applicant's disclosure may be used to support the claims which the instant

Applicant is now copying from Tracy et al., Patent Application Serial No. 10/165,227, filed June 7, 2002 (Publication No. 2001/0151342 A1), and is not intended as being the singular manner in which Applicant's Specification may be applied for supporting the copied claims under 35 U.S.C. §112, first paragraph.

Applicant's effective filing date, based upon his P.C.T. international filing date and Australian priority claim, is August 27, 1993, which antedates the effective filing date of Tracy et al., Patent Application Serial No. 10/165,227, filed June 7, 2002, and which claims continuation-in-part status on the basis of a patent application, Serial No. 09/106,659, filed June 29, 1998.

Thus, if the subject matter of Claims 1-5, 9-13, 15-20, 24-28 and 30-32 of Tracy et al., Patent Application Serial No. 10/165,227, filed June 7, 2002 (Publication No. 2001/-0151342 A1, published October 17, 2002), is patentable to Tracy et al., then Applicant respectfully submits that such claims are, as well, patentable for him.

Incorporation by Reference: It is Applicant's intent to copy Claims 1-5, 9-13, 15-20, 24-28 and 30-32 of Tracy et al., Patent Application Serial No. 10/165,227, filed June 7, 2002 (Publication No. 2001/-0151342 A1, published October 17, 2002) into the present Preliminary Amendment. While care has been taken to ensure that each of the for going claims has

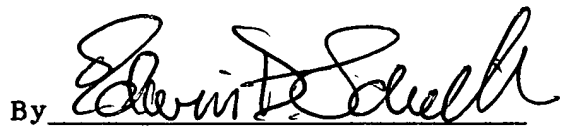
been properly and correctly copied, in the event that a substantive, and unintentional, typographical error has been committed in the copying of the foregoing claims, Applicant hereby states that the corresponding claim(s) in Tracy et al. are hereby incorporated by reference into the instant application, to the extent necessary to account for any possible typographical error. *See, In re Goodwin*, 43 USPQ2d 1856 (PTO Comm. 1997).

In view of the foregoing, Applicant respectfully submits that an interference should be declared between Claims 16-39 of the present continuation application and with the corresponding claims pending in Tracy et al., Patent Application Serial No. 10/165,227, filed June 7, 2002 (Publication No. 2001/0151342 A1, published October 17, 2002); and, that Applicant should be awarded priority of invention and a patent claiming the subject matter of such claims published in Tracy et al., Patent Application Serial No. 10/165,227, filed

June 7, 2002 (Publication No. 2001/0151342 A1, published October 17, 2002).

Respectfully submitted,

CHRISTOPHER RUSSELL BYRNE

By 

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October 17, 2003

Enc: Tracy et al., Patent Application Serial No. 10/165,227, filed June 7, 2002 (Publication No. 2001/-0151342 A1, published October 17, 2002) (Print-out from PTO website).

The Commissioner is hereby authorized to charge the Deposit Account of Applicant's Attorney, Account No. 19-0450, for any fees which may be due in connection with the prosecution of the above-identified patent application, but which have not otherwise been provided for.